

**Introduced by Senators McPherson and Margett**

February 20, 2003

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An act to repeal Section 5814.5 of, and to repeal and add Section 5814 of, the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 457, as introduced, McPherson. Workers' compensation: benefit delays.

Existing law provides that when the payment of workers' compensation benefits has been unreasonably delayed or refused, the amount of the compensation shall be increased by 10%. Existing law provides that this delay or refusal to pay compensation constitutes good cause to rescind, alter, or amend the order, decision, or award.

This bill would, instead, provide that when payment of compensation has been unreasonably delayed or refused, the amount of compensation may be increased up to 25%, or \$500, whichever is greater. This bill would require, as a precondition to a claim for penalties, that the employee give the employer written notice, as specified, and would prohibit any further penalty from being assessed if the employer pays a self-imposed increase of 10% along with any other self-imposed benefit increases. This bill would also provide that the Workers' Compensation Appeals Board has no jurisdiction to hear a claim for a penalty, as defined, unless the employee files a claim within one year from the date of the alleged unreasonable delay or refusal to pay benefits.

Existing law requires the board, when the payment of compensation has been unreasonably delayed or refused under specified circumstances, to award reasonable attorneys' fees incurred in enforcing the payment of the workers' compensation award.

This bill would repeal this provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5814 of the Labor Code is repealed.

2 ~~5814. When payment of compensation has been unreasonably~~  
3 ~~delayed or refused, either prior to or subsequent to the issuance of~~  
4 ~~an award, the full amount of the order, decision, or award shall be~~  
5 ~~increased by 10 percent. Multiple increases shall not be awarded~~  
6 ~~for repeated delays in making a series of payments due for the same~~  
7 ~~type or specie of benefit unless there has been a legally significant~~  
8 ~~event between the delay and the subsequent delay in payments of~~  
9 ~~the same type or specie of benefits. The question of delay and the~~  
10 ~~reasonableness of the cause therefor shall be determined by the~~  
11 ~~appeals board in accordance with the facts. This delay or refusal~~  
12 ~~shall constitute good cause under Section 5803 to rescind, alter, or~~  
13 ~~amend the order, decision, or award for the purpose of making the~~  
14 ~~increase provided for herein.~~

15 SEC. 2. Section 5814 is added to the Labor Code, to read:

16 5814. (a) When payment of compensation has been  
17 unreasonably delayed or refused, either prior to or subsequent to  
18 the issuance of an award, the amount of the benefit that is  
19 unreasonably delayed or refused may be increased up to 25 percent  
20 or up to five hundred dollars (\$500), whichever is greater. The  
21 appeals board shall use its discretion in order to accomplish a fair  
22 balance and substantial justice between the parties.

23 (b) As a precondition to a claim for penalties under this section,  
24 the employee is required to give written notice to the employer of  
25 the claimed unreasonable delay or refusal of benefits. If, within 20  
26 days from the date of service of this notice, the employer pays a  
27 self-imposed increase of 10 percent of the amount of  
28 compensation delayed or refused, in addition to any other  
29 self-imposed increases due under this division, there shall be no  
30 further penalty allowed under this section. If the employer disputes  
31 whether the delay or refusal is unreasonable, and the judge  
32 determines that the delay or refusal violates this section, the judge  
33 shall award the penalty prescribed by subdivision (a). In  
34 determining whether the delay or refusal is unreasonable, the

1 judge shall consider only the specific facts resulting in the delay  
2 or refusal of the specific benefit that is the subject of the request  
3 for penalties.

4 (c) The appeals board shall have no jurisdiction to hear a claim  
5 for a penalty under subdivision (a), unless the employee files a  
6 claim for a penalty within one year from the date of the alleged  
7 unreasonable delay or refusal to pay benefits. Upon approval of a  
8 compromise and release by the appeals board, it shall be  
9 conclusively presumed that any existing or potential penalties  
10 have been resolved, unless expressly excluded by the terms of the  
11 compromise and release.

12 (d) When a penalty is awarded under subdivision (a), the  
13 appeals board may allow a credit for any self-imposed increase  
14 under subdivision (d) of Section 4650 or subdivision (b), in order  
15 to accomplish a fair balance and substantial justice between the  
16 parties.

17 (e) Nothing in this section shall be deemed to create a civil  
18 cause of action.

19 SEC. 3. Section 5814.5 of the Labor Code is repealed.

20 ~~5814.5. When the payment of compensation has been~~  
21 ~~unreasonably delayed or refused subsequent to the issuance of an~~  
22 ~~award by an employer that has secured the payment of~~  
23 ~~compensation pursuant to Section 3700, the appeals board shall,~~  
24 ~~in addition to increasing the order, decision, or award pursuant to~~  
25 ~~Section 5814, award reasonable attorneys' fees incurred in~~  
26 ~~enforcing the payment of compensation awarded.~~

